

BEFORE THE NEW MEXICO STATE CORPORATION COMMISSION

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IN THE MATTER OF THE REGULATION
OF RATES, TERMS AND CONDITIONS
FOR THE PROVISION OF POLE ATTACH-
MENT SPACE TO CABLE TELEVISION
SYSTEMS BY TELEPHONE COMPANIES.

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

DOCKET NO. 1051

ORDER

THIS MATTER came before the New Mexico State Corporation Commission ("Commission") on January 10, 1984 pursuant to the Commission's October 18, 1983 Order in this matter directing the submission of briefs on the issue of the scope of regulation by the Commission for the provision of pole attachment space to cable television systems by telephone companies. The Commission, having heard the arguments of the parties, having considered the briefs of the parties and being fully advised in the premises, finds as follows.

FINDINGS OF FACT

1. The following intervenors, through their specified counsel, submitted legal memoranda and briefs as well as oral argument concerning the jurisdiction of the Commission to regulate the terms, rates and conditions for the provision of pole

attachment space by telephone companies to cable television systems:

New Mexico Cable Television Association by Hogan & Hartson (Gardner F. Gillespie, Esq.) and Poole, Tinnin & Martin (Robert C. Poole, Esq.);

Mountain States Telephone and Telegraph Company by T.M. Ledingham, Esq. and Sutin, Thayer & Browne, P.C. (Richard L.C. Virtue, Esq.); and

General Telephone Company of the Southwest by William G. Mundy, Esq. and Stephenson, Carpenter, Crout & Olmsted, P.C. (William P. Templeman, Esq.).

2. All parties agree that the 1978 amendment to the Federal Communications Act, 47 U.S.C. §224 provides that the States may regulate the rates, terms and conditions for pole attachments if it certifies to the Federal Communications Commission that,

a) it does regulate those rates, terms and conditions, and

b) in so regulating, the State has the authority to and does consider the interests of the subscribers of cable television services as well as the interests of the customers of utility services.

3. All parties agree that absent State regulation as set out above, the Federal Communications Commission very well may have jurisdiction to regulate the rates, terms and conditions for pole attachments.

4. New Mexico Cable Television Association contends that the Commission's constitutional jurisdiction over telephone company charges is to be narrowly construed and extends only to rates and charges of telephone companies in connection with furnishing message transmission services which are public utility telephone services.

5. Mountain States Telephone and Telegraph Company and General Telephone Company of the Southwest contend that the constitutional plenary power of the Commission is to be broadly construed to include all rates and charges made by a telephone company including the authority to regulate the specific rates to be charged by a telephone company to an entity which is not subject to the Commission's regulatory authority.

6. Cable television systems within the State of New Mexico utilize utility poles owned by telephone companies to attach television cables.

7. Such telephone companies are subject to the jurisdiction of the Commission and their utility poles are an integral part of the facilities necessary for the provision of public utility telephone service.

8. Regulation of the service of providing pole attachments by regulated telephone companies is necessary in the public interest so that all utility facilities will be operated to produce the optimal results for the telephone companies, their

customers. The public interest must and does include the interests of subscribers of cable television services.

9. The Commission is charged with a duty to consider the public interest in the setting of the rates and tariffs for the provision of public utility telephone services.

10. The interests of the general public, the telephone companies and the customers of such telephone companies require that the Commission regulate the rates, terms and conditions for the provision of pole attachment space to cable television systems by telephone companies in the State of New Mexico.

Based on the foregoing findings, the Commission concludes as a matter of law:

CONCLUSIONS OF LAW

1. The Constitution grant of Authority and jurisdiction of the Commission is plenary in nature and to be broadly construed.

2. Article XI, Section 7, New Mexico Constitution gives the Commission the power to and duty to fix, determine supervise, regulate and control all charges and rates of telephone companies.

3. The charges of telephone companies to cable television systems for the provision of pole attachment space is a charge

and rate of a telephone company within the meaning of said Article XI, Section 7, New Mexico Constitution.

4. The Commission's duty to fix rates is mandatory rather than discretionary.

5. Telephone company poles are used and useful and are necessary to the provision of public utility telephone service.

6. The Commission has jurisdiction over the charges and rates of telephone companies in the State of New Mexico for the provision of pole attachment space to cable television systems as required by 47 U.S.C §224.

7. The Commission is charged with a public interest to consider the interests of the subscribers of cable television services in setting the rates and charges of such pole attachments.

8. The Commission has jurisdiction over the parties to this proceeding and the subject matter thereof.

IT IS, THEREFORE, ORDERED:

1. That all telephone companies regulated by the Commission which provide pole attachment space for cable television systems shall file tariffs setting forth their proposed rates, terms and conditions for such pole attachments.

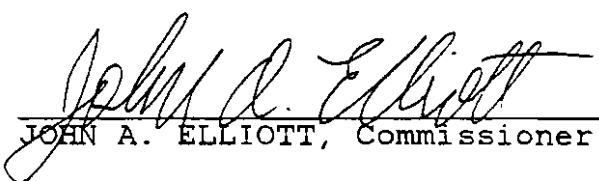
2. The Commission shall certify to the Federal Communications Commission that the Commission regulates the pole attachment rates, terms and conditions and that the Commission has the authority to consider, and does consider, the interests of the

subscribers of cable television systems as well as the interests of the consumers of the telephone utility services.


3. This Order is effective immediately.

Done at Santa Fe, New Mexico this 26th day of January, 1984.

ERIC P. SERNA, Chairman



JOHN A. ELLIOTT, Commissioner



JIMMIE W. GLENN, Commissioner

Attest:



Richard S. Harris
Chief Clerk

Dissenting: 

CERTIFICATE OF MAILING

I hereby certify that I caused a copy of the foregoing to be mailed by first-class mail, postage prepaid, to each of the following on this 26th day of

January, 1984:

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